

CHAPTER 13  
COURT-APPOINTED COUNSEL—ELIGIBILITY GUIDELINES

**493—13.1(815) Definitions.** As used in these rules, unless the context otherwise requires, the following definitions apply:

“*Affidavit of financial status*” means a full written disclosure of all income, assets, liabilities, dependents, and other information required to determine if an applicant qualifies for legal assistance by an appointed attorney.

“*Applicant*” means a person requesting legal assistance by appointed counsel.

“*Assets*” means all resources or possessions of the applicant.

“*Child*” or “*juvenile*” means a person so defined in Iowa Code chapter 232.

“*Family*” or “*household*” includes the applicant, applicant’s spouse, including a common-law spouse and applicant’s children living in the same residence.

“*Governmental assistance program*” means any public assistance program from which a person is receiving assistance.

“*Income*” means any money received from any source, including but not limited to remuneration for labor, products or services; money received from governmental assistance programs; tax refunds; prize winnings; pensions; investments; and money received from any other source.

“*Liabilities*” includes all living expenses, business or farming expenses, and fixed debts.

“*Poverty income guidelines*” means the annual poverty income guidelines established by the United States Department of Health and Human Services (DHHS).

**493—13.2(815) Eligibility.** The eligibility of any person for legal assistance by an appointed attorney shall be determined in accordance with Iowa Code section 815.9 as amended by 1999 Iowa Acts, Senate File 451, section 27, and the guidelines set forth in these rules. Any person who is eligible for appointed counsel shall be required by the court to repay all or a part of the cost of the applicant’s legal assistance.

**493—13.3(815) Income guidelines.** Annually, the state public defender shall provide information to the court showing the most recently revised poverty income guidelines.

**493—13.4(815) Designation of eligibility reviewer.** The chief judge of each judicial district may designate the person(s) or entity to evaluate the eligibility of persons for legal assistance by an appointed attorney. However, the decision to appoint counsel remains with the court.

**493—13.5(815) Application.** Any person claiming to be entitled to legal representation by an appointed attorney shall have an indigency evaluation done before being provided legal representation. The applicant should provide information on an Affidavit of Financial Status/Application for Appointment of Counsel and Order form. This form will be prescribed by the state public defender, but any form containing substantially the same information will be accepted.

**13.5(1) Affidavit.** The applicant shall provide information required by the Affidavit of Financial Status under penalty of perjury.

**13.5(2) *Family.*** The applicant shall provide information that accurately represents the number of family members who are supported by or live with the applicant.

**13.5(3) *Income.*** The applicant shall provide information that accurately represents the total gross income received or reasonably anticipated to be received by the applicant.

**13.5(4) *Household income.*** The applicant shall provide information that accurately represents the gross income of the household in which the applicant lives. The income of a spouse need not be included if the spouse is the alleged victim in the offense charged. The income of a child member of the household need not be included unless the legal representation is sought for the child in a delinquency proceeding.

**13.5(5) *Assets.*** The applicant shall provide information that accurately represents the total assets owned, in whole or in part, by the applicant. This includes the requirement to disclose interest in real property and tangible and intangible personal property.

**13.5(6) *Liabilities.*** The applicant shall provide information that accurately represents the total monthly debts and expenses for which the applicant is responsible. Child support and alimony payments should be included only when payments have been made in a timely manner.

**13.5(7) *Nature of proceedings.*** In criminal cases, the Affidavit of Financial Status shall contain a statement of the charge(s) against the defendant. In juvenile or civil cases, a statement of the nature of the proceedings shall be included.

**13.5(8) *Child applicant.*** If the applicant is a child, the child's parent, guardian or custodian shall complete the Affidavit of Financial Status. The Affidavit of Financial Status shall include a statement of the income, assets and liabilities of the person or persons having a legal obligation to support the child.

**13.5(9) *Additional information.*** The applicant shall provide such additional information as may be required by the court to determine applicant's eligibility for appointed counsel. The applicant has a continuing duty to update information provided in the Affidavit of Financial Status to reflect changes in the information previously provided.

**493—13.6(815) *Evaluation of Affidavit of Financial Status.*** In determining whether counsel should be appointed to represent the applicant, the court should consider the following:

**13.6(1) *Family size.*** The total size of applicant's household shall be used to determine eligibility for appointed counsel.

**13.6(2) *Household income.*** The applicant's income, or the combined income of the applicant and the applicant's spouse, if living in the same residence, shall be used in determining an applicant's household income, subject to the following:

*a.* The income of applicant's spouse shall not be considered if the spouse is the alleged victim of the offense charged.

*b.* The income of a child should not be considered unless the child is requesting representation in a delinquency case, or unless the child is under a conservatorship or is the beneficiary of trust proceeds.

*c.* In juvenile proceedings, the income of both parents shall be considered to determine whether the child is entitled to appointed counsel. If a child's parents are divorced, the household income of each parent shall be considered separately.

**13.6(3) *DHHS poverty income guidelines.*** The applicant's family size and household income shall be compared to the DHHS poverty income guidelines to determine whether the applicant's household income is less than 125 percent of the poverty level; between 125 percent and 200 percent of the poverty level; or greater than 200 percent of the poverty level.

**13.6(4) *Income less than 125 percent of the poverty level.*** If the applicant's household income is less than 125 percent of the poverty level, the applicant is entitled to appointed counsel, unless the court determines that the applicant is able to pay for the cost of an attorney to represent the applicant on the pending charge. In determining whether the applicant is able to pay for the cost of an attorney, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

**13.6(5) *Income between 125 percent and 200 percent of the poverty level.*** If the applicant's household income is greater than 125 percent, but less than 200 percent of the poverty level, the applicant is not entitled to appointed counsel, unless the court determines and makes a written finding that not appointing counsel on the pending charge would cause the applicant substantial hardship. In determining whether substantial hardship would result, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

**13.6(6) *Income greater than 200 percent of the poverty level.*** If the applicant's household income is greater than 200 percent of the poverty level, the applicant is not entitled to appointed counsel, unless the applicant is charged with a felony and the court determines and makes a written finding that not appointing counsel on the pending charge would cause the applicant substantial hardship. In determining whether substantial hardship would result, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

#### **493—13.7(815) Payment procedures.**

**13.7(1) *Payment to clerk.*** An applicant who has been determined to be eligible for appointed counsel shall pay any sums ordered by the court to the office of the clerk of the district court. This order for payment may be entered during or following the pendency of the action.

**13.7(2) *Wage assignments.*** If the applicant is employed, the applicant shall execute an assignment of applicant's wages. A portion of the applicant's wages, as determined by the court, shall be paid to the office of the clerk of district court for recovery of attorney fees. This assignment of wages may be entered during or following the pendency of the action.

These rules are intended to implement Iowa Code section 815.9 as amended by 1999 Iowa Acts, Senate File 451, section 27.

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